



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FTI - 204436

PRELIMINARY RECITALS

Pursuant to a petition filed February 11, 2022, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to utilize a tax intercept to recover a FoodShare (FS) overpayment, a hearing was held on March 16, 2022, by telephone.

The issue for determination is whether the PACU had authority to utilize a tax intercept.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Barron County Department of Human Services
335 E Monroe Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. Petitioner received FS in 2017. By a notice dated October 8, 2020, the agency informed her that she was overpaid \$634 in FS from April 1 through September 30, 2017 because she failed to report increased income, claim no. [REDACTED]. Petitioner appealed, but the Division of Hearings and Appeals upheld the overpayment in case no. FOP-200574, dated February 11, 2021.
3. Following the hearing decision the agency sent petitioner a repayment agreement on March 21, 2021, and when she did not respond, three dunning notices. Petitioner made no repayment arrangement.
4. In October, 2021, the PACU sent petitioner a notice that it intended to utilize a tax intercept to recover the claim. Petitioner filed this appeal on February 11, 2022.

DISCUSSION

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, FS, and Medical Assistance. The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from her state income tax refund and must inform the person that she may appeal the decision by requesting a hearing. *Id.* at §49.85(3)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

An appeal of a tax intercept notice must be filed within 30 days of the notice. However, there is no copy of the tax intercept notice in the record, so I will address the merits.

Petitioner had a prior hearing that upheld the overpayment. She testified that she felt the hearing decision was unfair, but at this point I have no authority to re-address whether the overpayment occurred. That issue was decided in the prior case. I can find only that the claim was established, petitioner did not make any payment on it or make arrangements for repayment, and thus the PACU had the authority to utilize the tax intercept to recover it.

CONCLUSIONS OF LAW

The PACU appropriately used a tax intercept to recover an FS overpayment that was established in 2020 and upheld in a decision by the Division of Hearings and Appeals.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

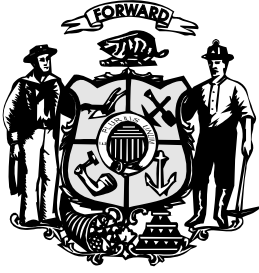
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of March, 2022

\s 

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 18, 2022.

Barron County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability